

REMARKS

Claims 24 through 48 are pending in this application. Claims 1-23, 49 and 50 have been canceled and claims 28-46 are currently withdrawn. Claims 25, 26 and 27 have been amended solely for the purpose of combining the features of the claims that they previously depended upon. The scope of claims 25, 26 and 27 has not been changed with this amendment. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Restriction Requirement

The Examiner has made final the restriction requirement dated August 29, 2006. Applicants disagree with the restriction requirements and finality thereof for, at a minimum, the reasons set forth in the Office Action Responses dated September 27, 2006 and January 30, 2007. Applicants reserve the right, and intend to petition this restriction requirement at a later date.

Claim Rejections under 35 USC §102

Examiner has rejected claims 24-27 and 47-50 as being anticipated based upon U.S. Patent No. 5,450,894, to Inoue et al. (herein after Inoue). Applicants respectfully disagree as the features of these claims are simply void from Inoue. Applicants have amended claims 25, 26 and 27 to include all of the features of the claims in which they previously depended upon. The purpose of this amendment is to place the application in better condition for appeal, pursuant to 37 CFR §1.116.

Applicants point out that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

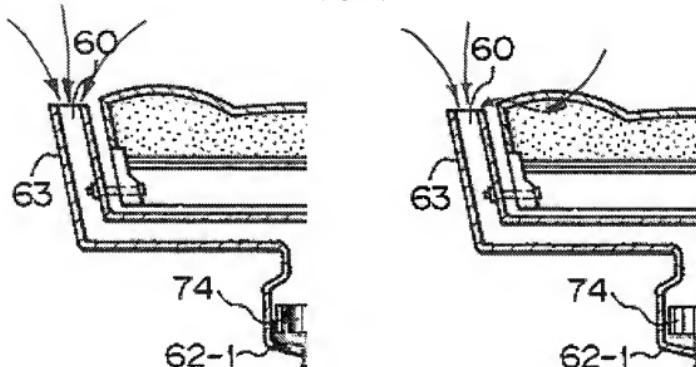
Claim 24 recites drawing ambient air through a seating surface of a transportation vehicle seat into a mixing region of the seat. The Examiner asserts that this is taught in Inoue by intake port 60, as shown in Fig. 1. In response to previous Applicants arguments, the Examiner further asserts that Inoue draws ambient air in the surrounding area, including through the seating surface of a transportation vehicle seat. Applicants respectfully disagree.

Below, Applicants have provided a partial view of the ventilation system shown in Fig. 4A of Inoue. The Examiner asserts that Inoue teaches that the system draws air through the

seating surface of the vehicle seat. Applicants have provided directional arrows of the air flow as believed to be asserted by the Examiner. In contrast, Applicants are of the opinion that the airflow through the ventilation system will not be through the seating surface, but instead, will follow the principle of fluid dynamics and follow the direction of least resistance. Applicants have provided exemplary directional arrow of what appears to be a path of least resistance.

US Patent No. 5,450,894, to Inoue

(Fig. 4A)



Applicants Interpretation

Examiner Interpretation

In view of the foregoing, Applicants are of the opinion that the airflow path of the Inoue system will follow the path of least resistance and will not flow through the denser material of the seat trim and seat cushion. Furthermore, Applicants are unaware of anywhere in Inoue where it teaches or suggest (explicitly or inherently) that the air flow will be through the seat trim or seat cushion. The Examiner simply cannot maintain that the air flow will not follow a path of least resistance, because not only does this feature appear to be absent from the teachings of Inoue, but also, it would likely be in contrast to the physical laws of fluid dynamics.

Claim 25 recites providing cooled fluid through the use of a thermoelectric device. As taught within the specification, thermoelectric devices (TEDs) act to provide heating or cooling by passing electricity therethrough.

Preferably, the fluid conditioning device is a self contained or solid state device that both cools and heats air. The most preferred device is a peltier or thermoelectric device (TED). TEDs are commercially available devices that provide solid state heating and cooling by passing electricity through the device. TEDs include a waste side and an active side, which are relative designations depending whether warm or cool temperature conditioned air is desired. Any supplier of TEDs would be able to provide suitable devices for use in the present invention, with TEDs from Tellurex (Telluride, CO) being preferred. The TED may be combined with any useful heat dissipation device; e.g. heat sinks, heat exchangers, fans, heat pipes or the like. Paragraph 38.

The Examiner fails to point out any thermoelectric device, whatsoever, which is specifically or inherently taught or suggested by Inoue, as required by *Verdegaal Bros. v. Union Oil Co. of California*. Instead, the Examiner references an evaporator used with the vehicle air conditioning system of Inoue. Applicants point out, as one skilled in the art would appreciate, evaporators do not generate heating or cooling by passing electricity therethrough. More so, the Examiner appears to acknowledge that thermoelectric devices and air conditioners "are completely distinct and exclusive from each other." Office Action dated April 11, 2007, p. 4, section 4, lines 3-10 (emphasis added). For at least this reasons, the Examiner has failed to form a case of anticipation, with respect to claim 25, as not only does Inoue fail to teach, or suggest, a thermoelectric device but in restricting the claims of the present invention the Examiner acknowledges that there exists a "distinct and exclusive" difference between a thermoelectric device and an air conditioning device (e.g. evaporator).

Claim 26 recites maintaining the pressure in the mixing region below the ambient pressure so that substantially all of the resulting mixture does not pass through the seating surface. This claim requires that the pressure within mixing region is below the surrounding ambient pressure. In at least one embodiment of the present invention this is achieved through the placement of the air mover down stream from the mixing region, thereby causing air to be drawn from the mixing region. As air is removed from the mixing region, negative pressure forms within the mixing region thereby causing a pressure below the surrounding ambient pressure.

In contrast, Inoue appears to consistently teach blowing air into the mixing region. This continuous blowing of air into the mixing region would appear to increase pressure within the mixing region, not decrease. For at least this reason, the Examiner has failed to form a case of

anticipation with respect to claim 26, as Inoue fails to teach, or suggest, forming negative pressure within the mixing region with respect to the surrounding ambient pressure.

In view of the foregoing, Applicants have indicated the lack of teachings by Inoue, with respect to claims 24, 25 and 26. Accordingly, these claims appear to be in condition for allowance. Likewise, claims 27, 47 and 48, which are dependent upon claim 24, are also believed to be in condition for allowance. In view of the foregoing, Applicants have not addressed the features of claims 27, 47 and 48, but also do not acquiesce to the formulated rejections. Instead, Applicants reserve the right to address the asserted rejections at a later date, if necessary.

Information Disclosure Statement

Applicant submitted an Information Disclosure Statement on January 30, 2007, with the required fee of \$180, for consideration of three references. The Examiner now refuses consideration of WO 05/042301 and DE19810936 for failing to comply with 37 CFR 1.98(a)(2). However, the Examiner does not assert the specific section of this rule the references fail to comply with. Applicants have reproduced this section below.

§ 1.98 Content of information disclosure statement

(a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

...

(2) A legible copy of:

- (i) Each foreign patent;
- (ii) Each publication or that portion which caused it to be listed, other than U.S. patents and U.S. patent application publications unless required by the Office;
- (iii) For each cited pending unpublished U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and
- (iv) All other information or that portion which caused it to be listed.

...

With regards to above referenced foreign patents, upon review of the record, through USPTO PAIR system, legible copies of both of these foreign patents have been provided and are currently available. As these are both foreign patents, the submission of further information does not appear to be necessary. Applicants request consideration of these references, or at a minimum, clarification why the Examiner refuses consideration of these references.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

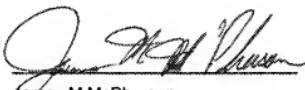
Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-1097 for any fee which may be due.

Date: Jan 11 27



James M McPherson
Registration No. 53,306
Dobrusin & Thennisch PC
29 W. Lawrence Street, Suite 210
Pontiac, MI 48342
248-290-2920
jmcpherson@patentco.com
Customer No. 25215